

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2666 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KANTILAL MAGANLAL MEHTA

Versus

STATE OF GUJARAT

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Appearance:

MR JD AJMERA for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/07/97

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner and perused the Special Civil Application.

2. Challenge is made by the petitioner, a teacher working in the respondent No.4-school to the order dated 2-5-1972 of the Director of Education, annexure 'B', under which it has been held that the petitioner is not a protected teacher, and as such, the benefits given to him

treating him as a protected teacher have to be recovered.

3. The petitioner was appointed on 12th June, 1964 in Nutan Vidhyalaya, Sankhari. The petitioner was appointed in the said school as a secondary teacher. He worked there upto 13th June, 1965. Then he was appointed as secondary teacher in K.K. Vidhyalaya on 14th June, 1965 and he worked there upto 14th June, 1972. In 1972-73, he got the degree of B.Ed..

4. The contention of the counsel for the petitioner is that the whole approach of the respondents is erroneous as the petitioner was appointed initially as secondary school teacher and he should have been given the same pay scale. There is no question of protected teacher. That question would have been there only when the petitioner would not have been appointed as a secondary teacher. Another contention has been raised that the order dated 2-5-1972, annexure 'B', has been passed without given any notice or opportunity of hearing to the petitioner. There is no dispute on this aspect as the respondents have not filed any reply. The order dated 2-5-1972, annexure 'B' has serious civil consequences as well as the petitioner's salary has also been reduced. The respondent-Director of Education before passing of this order should have given the notice or opportunity of hearing to the petitioner.

5. So, taking into consideration the totality of the facts of this case, the interest of justice will met in case this Special Civil Application is disposed of in terms that the order dated 2-5-1972 shall be considered to be only the proposed order to be made against the petitioner, and the petitioner shall file objections against the said order in which he has to take all the grounds available to him within one month from the date of receipt of certified copy of this order, and then the respondent No.2 shall decide this matter afresh without having any influence from that order and after hearing the petitioner, within a period of three months of receipt of the objections of the petitioner. The Special Civil Application and Rule stands disposed of in the aforesaid terms with no order as to costs.

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